

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Federal Trade Commission,

Plaintiff,

v.

Grand Canyon Education, Inc., *et al.*,

Defendants.

No. CV-23-02711-PHX-DWL

[FTC's PROPOSED]
**ORDER ON DISCLOSURE OF
INFORMATION IN EDUCATION
RECORDS**

Because information in education records subject to the Family Educational Rights and Privacy Act or "FERPA", 20 U.S.C. § 1232g, is relevant to the claims and defenses in this action, IT IS HEREBY ORDERED THAT:

Within fifteen days of receiving a discovery request that encompasses Personally Identifiable Information (34 C.F.R. § 99.3), in education records (20 U.S.C. § 1232g(4)) protected by 20 U.S.C. § 1232g(b)(2), or upon Defendants determining that their response to a discovery request will include Personally Identifiable Information from such education records, Defendants shall send notice pursuant to 20 U.S.C. § 1232g(b)(2)(B), and 34 C.F.R. § 99.31(a)(9), to students whose education records are encompassed by the request or contain information that Defendants would disclose in their response. The notices shall notify the recipients of this action and the identity of

1 the parties, and inform the recipients that the students' education records have been
2 identified as relevant to claims in this proceeding and the education records or
3 information from the records may be released to the Federal Trade Commission and
4 persons connected to this litigation pursuant to a court order of the United States District
5 Court for the District of Arizona that limits the use and disclosure of Personally
6 Identifiable Information in the records. The notice shall further inform recipients that
7 the records or information from the records may be disclosed fifteen days after the date
8 of the notice, or at a later date, and the student has the right to seek protective action
9 prior to that date.

10 Defendants shall notify the students whose education records are potentially
11 subject to disclosure in response to discovery requests by electronic mail or, if no valid
12 electronic mail address is available, by first class mail sent to the student's last known
13 address.

14 Defendants shall label responses to requests for production and interrogatories
15 that contain information from education records subject to FERPA as "FERPA
16 Material", and Personally Identifiable Information from responses labelled "FERPA
17 Material" may be filed only in accordance with the Federal Rules of Civil Procedure, the
18 Local Rules and ECF Procedures of the District of Arizona, and Orders of this Court.

19 Personally Identifiable Information regarding students in responses labelled
20 "FERPA Material" may only be disclosed to:

- 21 a. the Court and court personnel;
- 22 b. the parties' outside counsel and designated employees only to the extent
23 necessary to assist in the litigation;
- 24 c. experts and contractors consulted or retained by the parties or counsel, and
25 their employees, provided that they agree in writing to abide by this
26 protective order or execute FTC Form X33-Nondisclosure Agreement for

Contractors;

d. any person who had prior access to the Personally Identifiable Information or participated in a communication that is the subject of the Personally Identifiable Information;

e. witnesses and their counsel, provided that they agree in writing to abide by this Order.

Disclosure of Personally Identifiable Information from education records pursuant to this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal, therefrom, and for no other purpose whatsoever, provided, however, that the FTC may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Personally Identifiable Information as provided by Sections 4.9 – 4.11 of its Rules of Practice; 16 C.F.R. §§ 4.9 – 4.11, Sections 6 and 21 of the FTC Act, 15 U.S.C. §§ 46(f) and 57b-2; or any other legal obligation imposed upon the FTC.

DATED this _____ day of _____, 20__.

Hon. Dominic W. Lanza
United States District Judge